MSS

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO. 7292 OF 2006

MALOJIRAO SAMBHAJIRAO GAIKWAD .. PETITIONER

Vs.

BALKRISHNA SADASHIV KAPSE & ORS. RESPONDENTS

Mr. Tejas Deshmukh i/b P. B. Shelke for petitioner

Mr. Vishal Kanade for R-1

Mr. Nitin Deshpande for R-2 to 5

Mrs. S.S.Bhende, AGP for R-6

CORAM: SMT. RANJANA DESAI &
SMT. R. S. DALVI,JJ.

DATE: NOVEMBER 29, 2007.

P.C.

. The petitioner has challenged in this petition reappointment of respondent 1 Balkrishna Sadashiv Kapse in respondent 2 Grampanchayat vide Resolution dated 3/10/05.

2. The petitioner was at the relevant time Member of respondent 2 Grampanchayat. It is his case that respondent 1 who is working as recovery clerk in the 2nd respondent Grampanchayat must be removed

from job because a criminal case is pending against him in the court of Judicial Magistrate First Class, Indapur. According to the petitioner 1st respondent is charged with the offences under Section 379, 420 and 468 of the Indian Penal Code. Reliance is placed on Rule 3 of the Bombay Village Panchayat Servants (Recruitment and Condition of Service) Rules 1960, which contains disqualifications. It says that no person shall be appointed as servant of the panchayat, if he is not of good character; or he has been dismissed for misconduct from the service of any other panchayat or any local body or from Government service, or he has been convicted by a criminal court of any offence relating to elections or involving moral turpitude.

3. It is contended that the fact that a criminal complaint involving such grave charges is pending against the petitioner, prima facie indicates that he is not of a good character. It is also pointed out that the Grampanchayat by a Resolution has dismissed the petitioner and, therefore, the Grampanchayat could not have re-appointed him.

4. We have heard learned counsel for the

petitioner. He has reiterated the contentions raised by the petitioner in the petition.

5. We have also heard Mr. Kanade, learned counsel for the 1st respondent at great length. Learned counsel contended that the petition is not filed bonafide. He submitted that the resolution dismissing the petitioner is passed without following the principles of natural justice. The petitioner was not even heard. The learned counsel then contended that the relief which is sought by the petitioner cannot be granted to the petitioner in writ jurisdiction. In this connection reliance is placed on the judgment of this court in **Mahadeorao Gulabrao Bhuibar & Ors. v. The State of Maharashtra, 1996 (2) B.C.R. 96** and a judgment of the Madhya Pradesh High Court in **Jagram v. Gwalior Town and Country Development Authority Gwalior & Ors., AIR 1987 MP 11**. It is also contended that a criminal case is pending against the petitioner and, therefore, the petitioner should not be permitted to raise this contention.

6. On a query made by this court, learned counsel for the petitioner on instructions from the petitioner who is present in the court state that

the criminal case pending against the petitioner is an outcome of some land dispute. In the absence of any record being produced before us, we are unable to state whether the said complaint arises out of land dispute or not. Be that as it may, the fact remains that some criminal complaint is pending against the petitioner.

7. In the facts and circumstances of the case, and having regard to the judgments cited before us, we are of the opinion that it is not possible for us to give a direction to terminate respondent 1's services or give a direction to remove him from the post of recovery clerk. Respondent 1 is not convicted. However, the fact that a criminal case involving some serious charges is pending against respondent 1 cannot be lost sight of. The fact that he is permitted to work as recovery clerk causes concern. We are of the opinion, that till such time as the criminal case is concluded it would not be proper for the 2nd respondent Grampanchayat to permit respondent 1 to handle the work of recovery. Grampanchayat can take appropriate decision after the decision of the criminal case.

8. Learned counsel for the Grampanchayat states that in the circumstance of this case and considering the fact that the criminal complaint is pending against 1st respondent, the Grampanchayat shall not give him the work of recoveries. He shall be assigned some other job which does not involve monetary transactions. Learned counsel for the Grampanchayat states that an appropriate undertaking will be taken from the 1st respondent so as to secure his good conduct. Learned counsel for respondent 1 states that respondent 1 will give the necessary undertaking. We accept the statements made by the learned counsel.

9. In view of this no further order is necessary on this petition. We, however, make it clear that we have not expressed any opinion as to whether the 1st respondent is guilty of any criminal offence. The criminal court seized of the case shall deal with it independently and in accordance with law.

10. The petition is disposed of.

JUDGE

JUDGE